IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

INCOME-TAX APPLICATION NOs. 133/1994, 135/1994 & 136 OF 1994

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : J.P. DEVADHAR AND
B.P. DHARMADHIKARI, JJ.
APRIL 21, 2007.

Heard Shri Jaiswal, learned counsel for the applicant and Shri Thakkar, learned counsel for the respondent.

These three applications are filed by the revenue under Section 256(2) of the Income-tax Act, 1961, against the order of the Tribunal dated 30.3.1994 in R.A. No. 531, 532 & 533/NAG/93 declining to refer the questions of law set out in the respective applications.

The Assesment Years involved herein are Assessment Year 1984-85, 1985-86 and 1986-87.

The basic question raised in all these applications is whether the Tribunal was justified in deleting the penalty levied under Section 271(1)(c) of the Income-tax Act, 1961.

The assessee is a partnership firm

engaged in manufacturing and selling stainless steel utencils. During search action initiated on 19 & 20th August 1985 at the factory and residential premisses of the partners of the firm, certain cash and ornaments belonging to the partners were seized. On scrutiny, it was noticed that the assessee was making purchases and sales outside the books maintained by the assessee. While the proceedings under Section 132(5) of the Income-tax Act, 1961, were in progress, the assessee filed petition before the C.I.T. under section 273A of the Act. It is not in dispute that the C.I.T. has slightly enhanced the amount offerred by the assessee. Accordingly, the assessee has offered the amount to tax as quantified by the C.I.T. under Section 273A of the Act. The additional income offerred by the assessee was accepted by the Assessing Officer and penalty was levied under Section 271(1)(c) of the Act. On appeal filed by the assessee, the CIT(A) upheld the penalty levied by the Assessing Officer for the Assessment Year 1984-85 and 1985-86. The CIT(A) deleted the penalty for the Assessment Year 1986-87 on the ground that the return was filed in the

normal course on 17.10.1986 and therefore explanation 5 to Section 271(1)(c) was not attracted.

Being aggrieved by the said order, both the assessee and revenue filed appeal before the ITAT. The Tribunal dismissed the appeal filed by the revenue for the Assessment Year 1986-87 and allowed the assessee's appeal for 1984-85 and 1985-86. The Reference Applications filed by the revenue against the said order were dismissed by the Tribunal. Hence, these applications are filed by the revenue under Section 256(2) of the Income-tax Act, 1961.

As regards the deletion of penalty for Assessment Years 1984-85 and 1985-86 is concerned, admittedly there was a settlement petition filed by the assessee seeking waiver of interest and penalty and admittedly the C.I.T. wanted the assessee to offer slightly higher amount than what was declaed in the Settlement Petition. Accordingly, the assessee had offered the amount as suggested by the C.I.T. In these circumstances, the Tribunal held that the Assessing Officer was not justified in levying penalty for the Assessment

Years 1984-85 and 1985-86.

As regards the penalty for the Assessment Year 1986-87 is concerned, the Tribunal has held that the return of income was filed within the assessment year itself and moreover, the assessee had given explanation regarding the unexplained cash credit by stating that Rs. Five lakhs were borrowed from M/s. Bhartiya and Sons. The Tribunal held that the Assessing Officer has not found the explanation given by the assessee to be false. In these circumstances, in our opinion, the findings given by the Tribunal are based on appreciation of facts.

No question of law arises from the order of the Tribunal. Accordingly, all the applications are dismissed. Rule discharged. No costs.

JUDGE **JUDGE**

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